

Message Text

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ACTION EB-07

INFO OCT-01 ARA-06 ISO-00 CIAE-00 COME-00 DODE-00 DOTE-00

FMC-01 INR-07 NSAE-00 CG-00 OFA-01 DLOS-04 PM-04 H-02

L-03 NSC-05 PA-01 PRS-01 SP-02 SS-15 USIA-06 IO-11

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R 161812Z JAN 76

FM AMEMBASSY SAN JOSE

TO SECSTATE WASHDC 2532

ILNFO RUEHCR/AMCONSUL BELIZE 76

AMEMBASSY BOGOTA

AMEMBASSY BRIDGETOWN

AMEMBASSY CARACAS

AMEMBASSY GEORGETOWN

AMEMBASSY GUATEMALA

AMEMBASSY KINGSTON

AMEMBASSY MANAGUA

AMEMBASSY PORT AU PRINCE

AMEMBASSY SAN SALVADOR

AMEMBASSY SANTO DOMINGO

AMEMBASSY TEGUCIGALPA

AMEMBASSY MEXICO

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E.O. 11652: N/A

TAGS: EWWT, ETRD, ETRN, CS

SUBJECT: COSTA RICAN CARGO RESERVATION LAW FAVORING NAMUCAR

REF: 75 SAN JOSE A-130, STATE 2666

1. SUMMARY: LAW PROVIDING FOR ESTABLISHMENT OF NAMUCAR IN COSTA RICA (PRELIMINARY COPY OF WHICH FORWARDED REPAIR) WENT INTO EFFECT JANUARY 10, 1976 ON PUBLICATION IN OFFICIAL GAZETTE. AS IT APPEARS TO THE EMBASSY THAT THE U.S.-COSTA RICA TREATY OF FRIENDSHIP, COMMERCE AND LIMITED OFFICIAL USE

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NAVIGATION MAY REQUIRE COSTA RICA TO PROVIDE TO U.S. SHIPPING

FIRMS TREATMENT EQUAL TO THAT ACCORDED NAMUCAR AND TO PRIVATE COSTA RICAN SHIPPING COMPANIES, THE EMBASSY WILL POSTPONE PROTECT ACTION REQUESTED IN STATE 2666 UNTIL THE DEPARTMENT HAS HAD AN OPPORTUNITY TO FORM AN OPINION ON THE APPLICABILITY OF THE FCN TREATY. IF THE TREATY BE APPLICABLE, IT WOULD MAKE A STRONGER BASIS FOR AN APPROACH TO THE GOCR THAN THE POINTS CONTAINED REFTEL. END SUMMARY.

2. LOCAL REPRESENTATIVES OF SEA-LAND AND PRUDENTIAL LINES CALLED ON EMBASSY'S COMMERCIAL ATTACHE JANUARY 14 TO REGISTER CONCERN ABOUT EFFECTS ON U.S. SHIPPING LINES OF EXTENSIVE BENEFITS LAW ACCORDS NAMUCAR. THEIR PRINCIPAL CONCERN WAS ESTABLISHMENT OF CARGO RESERVE OF 80 PER CENT OF COSTA RICAN MARITIME EXPORTS TO COUNTRIES SERVED BY NAMUCAR WHICH ACCORDED NOT ONLY TO MULTI-NATIONAL ENTITY BUT ALSO TO 100 PER CENT COSTA RICAN-OWNED SHIPPING COMPANIES. (NO ONE HAS YET EXPLAINED HOW TWO-AND POSSIBLE MORE- SEPARATE ENTITIES WILL EACH ENJOY A PREFERENCE OF 80 PER CENT OF MARITIME EXPORTS. PERHAPS THE 80 PER CENT OF CARGO WOULD BE DIVIDED EQUALLY BETWEEN NAMUCAR AND COSTA RICAN SHIPPING COMPANIES). LOCAL REPS POINTED OUT THAT LAW IS SO DRAFTED THAT NAMUCAR COULD EVENTUALLY SERVE U.S. PORTS, IN WHICH CASE CARGO PREFERENCE WOULD APPEAR TO APPLY. THEY ALSO SUGGESTED POSSIBILITY OF FORMATION BY EXISTING SHIPPING COMPANIES OF "DUMMY" OR "FRONT" COMPANIES PURPORTING TO BE 100 PER CENT COSTA RICAN OWNED FOR PURPOSE OF GETTING SHARE OF CARGO RESERVE.

3. SEA-LAND REP ALSO STATED HIS HEAD OFFICE HAD ADVISED HIM THAT NAMUCAR LAW WAS IN CONFLICT WITH U.S. - COSTA RICAN TREATY. WE ASSUME SEA-LAND REFERRING TO U.S. - COSTA RICAN TREATY OF FRIENDSHIP, COMMERCE AND NAVIAGATION OF 1851. OUR READING OF APPLICABLE ARTICLES LEADS US TO BELIEVE THAT LAW NOT NECESSARILY IN CONFLICT WITH TREATY BUT RATHER THAT TREATY WOULD REQUIRE COSTA RICA TO EXTEND TO U.S. SHIPPING COMPANIES SAME PRIVILEGES ACCORDED TO NAMUCAR AND TO COSTA RICAN-OWNED COMPANIES. ARTICLE THREE OF TREATY REQUIRES A CONTRACTING PARTY TO EXTEND ANY FAVOR, PRIVILEGE OR IMMUNITY WHATEVER IN MATTERS OF COMMERCE AND NAVIGATION GRANTED TO SUBJECTS OR CITIZENS OF ANY OTHER STATE TO THE SUBJECTS OR CITIZENS OF THE OTHER CONTRACTING PARTY. PRESUMABLY, IMMUNITIES LIMITED OFFICIAL USE

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AND BENEFITS GRANTED BY COSTA RICA TO A MULTINATIONAL ENTERPRISE SUCH AS NAMUCAR WOULD BE CONSIDERED TO BE IN EFFECT EXTENDED TO THE CITIZENS AND SUBJECTS OF THE OTHER COUNTRIES INCLUDED IN THE ENTERPRISE. WITH RESPECT THE PRIVILEGES ENJOYED BY 100 PER CENT COSTA RICAN-OWNED SHIPPING COMPANIES, ARTICLE EIGHT OF TREATY, IN REFERRING TO LADING AND UNLADING OF VESSELS, SPECIFIES THAT U.S. CITIZENS SHALL RECIPROCALLY ENJOY THE SAME PRIVILEGES, LIBERTIES AND RIGHTS, AS NATIVE CITIZENS.

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4. IN VIEW OF POSSIBLE TREATY RIGHTS THAT MIGHT OBLIGE
COSTA RICA TO GIVE U.S. SHIPPING COMPANIES EQUAL TREATMENT,
EMBASSY WILL POSTPONE ACTION ON STATE 2666, UNLESS OTHERWISE
INSTRUCTED, UNTIL DEPARTMENT HAS HAD AN
OPPORTUNITY TO STUDY RELEVANCE OF FCN TREATY. IF DEPARTMENT'S
INTERPRETATION IS THAT U.S.SHIPPING LINES ARE ENTITLED UNDER
FCN TREATY TO TREATMENT EQUAL TO THAT ACCORDED NAMUCAR AND
PRIVATE COSTA RICAN SHIPPING LINES, EMBASSY BELIEVES THAT THIS
WOULD MAKE STRONGER CASE TO PRESENT TO COSTA RICAN GOVERNMENT

THAN POINTS IN PARA 3 OF STATE 2666.

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5. EMBASSY IS, IN ANY CASE, SKEPTICAL OF VALUE OF THREATENING TO RETALIATE AGAINST COSTA RICA UNDER THE U.S. TRADE ACT, OR UNDER THE MERCHANT MARINE ACT, OVER A POSSIBLE EFFECT ON U.S. TRADE WHICH THE DEPARTMENT SAYS MIGHT BE CONSIDERED INCONSEQUENTIAL BUT FOR THE FACT THAT OTHER NAMUCAR COUNTRIES MIGHT TAKE SIMILAR ACTION. AS WE UNDERSTAND NAMUCAR, IT IS BEING SET UP TO PROVIDE SHIPPING SERVICES WHERE SUCH SERVICES ARE NOW LACKING AND THERE ARE NO PRESENT PLANS TO TOUCH U.S. PORTS. IF NO SUBSTANTIAL ADVERSE EFFECTS ON U.S. TRADE ARE FORESEEN IN THE NEAR FUTURE, PERHAPS ANY WARNING OF POSSIBLE RETALIATORY ACTION SHOULD BE IN THE CONTEXT OF HARM TO U.S. TRADE THAT MIGHT DEVELOP IF NAMUCAR WERE TO ATTEMPT TO SERVE SHIPPING ROUTES TO OR FROM THE U.S. AND TO APPLY CARGO PREFERENCE TO SUCH ROUTES.

6. ON THE OTHER HAND, PERHAPS THE DEPARTMENT FORESEES SOME POSSIBLE HARM TO IMMEDIATE U.S. INTERESTS. DOES THE DEPARTMENT'S POINT THAT "CARGO RESERVATIONS SHOULD NOT BE SO EXTENSIVE OR ARBITRARY THAT REASONABLE SERVICES, INCLUDING WAY-PORT TRADES, OPERATED BY TRADING PARTNERS AND TRADITIONAL CROSS-TRADERS, CANNOT BE MAINTAINED ON A SOUND ECONOMIC BASIS" REFER TO ANY ACTUAL U.S. FLAG SHIPPING THAT THE DEPARTMENT BELIEVES MIGHT BE HARMED BY RESERVATION OF CARGO ON NAMUCAR ROUTES BY COSTA RICA? IF SO, IT WOULD BE HELPFUL FOR THE EMBASSY TO BE ABLE TO CITE EXAMPLES TO THE GOCR, IF IT IS TO MAKE A CASE IN FAVOR OF POSSIBLE HARM TO U.S. INTERESTS ENGAGED IN WAY-PORT TRADE THROUGH COSTA RICAN PORTS. EMBASSY IS AWARE OF OPERATIONS TO COSTA RICA OF U.S. SHIPPING LINES FROM EAST, GULF AND WEST COAST, BUT IS NOT AWARE OF ANY REGULAR U.S. FLAG SERVICE BETWEEN COSTA RICA AND THE VARIOUS NON-U.S. PORTS IN THE CARIBBEAN THAT NAMUCAR HOPES TO SERVE.
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